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## PARAGRAPH 1

The Examiner has asserted that the person signing the submission establishing ownership interest, Mariann McNally, has failed to state his/her capacity to sign for the corporation or other business entity, and he/she has not been established as being authorized to act on behalf of the assignee.

Applicants respectfully disagree. Ms. McNally indicated her title to be "Assistant Secretary". She is a corporate officer of the Assignee corporation, with the apparent authority to sign, as denoted by her title. According to the MPEP § 324 (II) (A):

The submission may be signed by a person in the organization having apparent authority to sign on behalf of the organization. 37 CFR 3.73(b)(2)(ii). An officer (chief executive officer, president, vice-president, **secretary**, or treasurer) is presumed to have authority to sign on behalf of the organization. The signature of the chairman of the board of directors is acceptable, but not the signature of an individual director. **Modifications of these basic titles are acceptable, such as vice-president for sales, executive vice-president, assistant treasurer, vice-chairman of the board of directors. (emphasis added)**

Since the MPEP clearly indicates that the corporate title "Secretary" is presumed to have authority to sign on behalf of the organization, and that a modification of this basic title would be acceptable, and the MPEP even includes the modifier "assistant" among the modifiers specifically approved as acceptable, it is clear that, as Assistant Secretary, Ms. McNally has the apparent authority to sign on behalf of her organization, and she is not required to further establish her authority.

Nevertheless, Applicants have *previously supplied* a Statement Under 37 C.F.R. § 3.73(b), signed by Ms. McNally, which indicates (above her signature) that she is authorized to act on behalf of the assignee (see accompanying copy). Accordingly, the Examiner is requested to withdraw his requirement for another submission establishing ownership interest in the patent.

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## PARAGRAPH 2

The Examiner has noted that the original patent must be received by the United States Patent and Trademark Office before the reissue application can be allowed. Applicants request that the Examiner contact the undersigned Attorney (or another attorney in the same law firm - telephone number 419-255-5900) by telephone and/or in writing to advise of the need to send in the original patent once all other issues in the application have been resolved, and the reissue application has been determined to be in condition for allowance *except for* the submission of the original patent.

## PARAGRAPH 3

The Examiner rejected Claims 21 through 25, and 36 through 40 under 35 U.S.C. § 251 as being improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based.

With respect to Claims 21, 23 through 25, and 36 through 40, these claims now depend directly or indirectly from Claim 18, which was a claim in the originally granted patent. Therefore, these claims cannot be broadened claimed subject matter.

Claim 22, although it does not now depend from Claim 18. Claim 22 includes limitations relating to both fluid separators, and to blending of the signals making up the brake demand signal. More specifically, Claim 22 contains a limitation that the brake system contain "a respective fluid separator unit being interposed between each of said first and second wheel brakes of said first vehicle axle and an associated one of the electrically controllable brake valve devices, said first and second wheel brakes being connected to a respective one of said isolation valves associated with said two brake circuits of said master cylinder". Thus Claim 22 requires 2 fluid separators. In contrast, Claim 1 of the prior application (08/813,146) merely required that there be "a fluid separator unit", that is, as few as one fluid separator. Thus Claim 22 is narrower with respect to the fluid separator element of the claim than the subject matter given up during prosecution, and thus does not constitute impermissible recapture.

On page 7 of the Office Action, the Examiner states that "because the limitations of the amended claims in the patent, which are germane to the prior art of

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record as substantiated by applicant's arguments, are not found in at least substantially the same form in any of the independent claims submitted in the reissue application, they remain rejected under the recapture doctrine..." (emphasis added). Respectfully, Applicants do not believe that this is the proper test. The recapture doctrine merely requires that the claims in a broadening reissue application, such as this one, cannot be as broad or broader than the claims before amendment in the original application (that is, not as broad or broader than the subject matter given up). The recapture doctrine does NOT require that any limitation in a new claim in the reissue application be in substantially the same form as the amended limitation in the original application. Applicants are allowed to seek a limitation which is broader in scope in an area directed to an Amendment made to overcome art in the original application, as long as Applicants retain, in broadened form, the limitation added. (see MPEP §1402 I.C2(d)). Here the limitation relating to the fluid separator is broader than the limitation added to Claim 1 in the original application ("having a movable pressure boundary"), yet narrower than the limitations relating to the fluid separator existing before the amendment adding the limitation to Claim 1 in the original application (the "canceled claim subject matter in an area relating to the surrender"). Claim 22 as now presented is narrower than Claim 1 as filed in the original application with respect to the area relating to the surrender (the fluid separator) in that Claim 22 now requires at least two fluid separators, each of which is "interposed between each of said first and second wheel brakes of said first vehicle axle and an associated one of the electrically controllable brake valve devices, said first and second wheel brakes being connected to a respective one of said isolation valves associated with said two brake circuits of said master cylinder".

Similarly, the last clause of Claim 22 relates to the subject matter amended during the prosecution of Claim 18 in the original application, that is, the operation of the control unit. However, instead of the narrow limitation added by the amendment, specifying the relative weighting of the signals with respect to "a first part of the stroke" and a "second part of the stroke", Claim 22 includes a somewhat broader limitation indicating that the control unit is responding as a "blended function of both

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said first signal and said second signal, with the contribution of the second signal relative to the first signal generally varying as a function of the first signal"; that is, as a function of a first signal indicative of the position of the brake pedal, while still being narrower than the pre-amendment claim language that merely required changes in the weighting between a "first movement" and "subsequent movement".

Applicants note that in the paragraph spanning pages 6 to 7 of the Office Action, the Examiner references arguments made with respect to "independent claim 8" and suggests limitations that should attach to new claims in the reissue application. Applicants respectfully traverse this suggestion, noting that Claim 8 in the original application was a DEPENDENT claim, not an independent claim. Thus, elimination of the limitations added to Claim 8 is not recapture, since Claim 1, from which Claim 8 depended, is by definition broader than Claim 8 as originally presented. Similarly, the Examiner refers to arguments presented with respect to Claim 3. Again, Claim 3 was a dependent claim, and the omission of limitations added to Claim 3 from new claims in the Reissue Application is not recapture.

Accordingly, Applicants believe that Claim 22 is proper in scope with respect to the recapture doctrine, and the Examiner is requested to withdraw the rejection thereof under 35 U.S.C. § 251.

## PARAGRAPHS 5, 6 &amp; 8

The Examiner rejected Claim 21 and 23 through 25 under 35 U.S.C. § 102(b) as being anticipated by Burgdorf, U.S. Patent No. 4,580,847, by Shirai, U.S. Patent No. 4,812,777, or by Winner et al., U.S. Patent No. 5,588,718. Since these claims now depend directly or indirectly from allowed Claim 18, the Examiner is respectfully requested to withdraw this rejection of these claims.

## PARAGRAPH 7

The Examiner has rejected Claims 21 through 25, and 36 through 40 under 35 U.S.C. § 102(b) as being anticipated by Steiner, U.S. Patent No. 5,123,713. The Examiner asserts that "Steiner meets the claimed requirements as broadly claimed,"

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and notes the operation of the valves 48, 49 and the fluid separator devices 24 and/or 26.

With respect to Claims 21, 23 through 25, and 36 through 40 these claims now depend directly or indirectly from allowed Claim 18, and the Examiner is therefore respectfully requested to withdraw this rejection of these claims.

With respect to Claim 22, Applicants again respectfully disagree. Steiner teaches a master cylinder 18 as a source of pressurized hydraulic brake fluid, and an auxiliary pressure source 43. When the brake pedal 16 is depressed, the master cylinder 18 supplies fluid to the brakes 12 and 13. While the master cylinder 18 is supplying fluid to the brakes 12, 13, if the ABS system 11 recognizes a locking condition in either of the brakes 12, 13 that requires control, the valve 48 is switched into its blocking position and the pressure modulator 24 is blocked from the master cylinder 18. The inlet control valve 39 is switched into its blocking position and the outlet control valve is switched into its through-flow position. The control pressure chamber 37 of the pressure modulator 24 is then pressure-relieved with respect to the reservoir 47. If the locking condition subsides, the valve 39 is switched back into its through-flow position, and fluid from the auxiliary pressure source 43 can be supplied to either of the brakes 12, 13. The auxiliary pressure source 43 can only supply pressurized fluid after the master cylinder 18 has supplied pressurized fluid to the brakes 12, 13 and the ABS system 11 has been activated. Therefore, the master cylinder 18 is the normal source of pressurized hydraulic fluid. Steiner also teaches that the master cylinder 18 (the normal source) is the only source of pressurized fluid in the event of electrical failure in the brake system. There is no other (backup) source of pressurized fluid to the brakes in such an event.

Claim 22 recites a normal hydraulic energy source and a master cylinder for carrying out a backup brake operation. The Specification at column 23, lines 57 through 65, describes the operation of the normal source and the backup source as follows, "as in the previous embodiments of the brake system 2, 200 and 300, upon failure of the normal source of pressurized hydraulic brake fluid 4 to the vehicle brakes 11a and 11b, or upon failure of the control module, the backup source 6 of

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pressurized hydraulic brake fluid supplied by the master cylinder 12 will be an available source of pressurized hydraulic brake fluid to be applied to the brakes of the brake system 350."

Steiner teaches that the master cylinder 18 is the normal source of pressurized fluid. Steiner also teaches that the master cylinder 18 is the only source of pressurized fluid in the event of electrical failure in the brake system. The auxiliary pressure source 43 is not a backup source of pressurized hydraulic fluid, as defined in Applicants' Specification and described above, since, for example, it cannot supply pressurized fluid to the brakes in the event of an electrical failure, because it cannot position the electrical solenoid valves to do so. Steiner does not teach a backup source of pressurized fluid that is applied to the brakes 12, 13 separate from the normal source of pressurized fluid.

The master cylinder of Steiner cannot be considered both a normal source of pressure (as taught by Steiner) and a backup source of pressurized fluid (as suggested by the Examiner), to meet the limitations recited in Claim 22. Applicants again respectfully request reconsideration of the rejection of record.

## PARAGRAPH 11

The Examiner rejected Claim 37 under 35 U.S.C. § 103 as being unpatentable over Winner et al., U.S. Patent No. 5,588,718, in view of Steiner, U.S. Patent No. 5,123,713. Since Claim 37 now depends from allowed Claim 18, the Examiner is respectfully requested to withdraw this rejection.

## CONCLUSION

It is believed that Claims 1 through 40 are in condition for allowance. The accompanying copy of the previously supplied Statement Under 37 C.F.R. § 3.73(b), signed by the Assistant Secretary of the assignee indicates that the Assistant Secretary is authorized to act on behalf of the assignee. Return of the original copy of the patent will be occur when Applicants' attorney is notified that all claims are allowed, and no other issues remain to be resolved.